

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 438 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MUNNABHAI IDUBHAI SHEIKH

Versus

COMMISSIONER OF POLICE

Appearance:

MS BANNA DATTA for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 02/05/2000

ORAL JUDGEMENT

#. The petitioner - Munnabhai Idubhai Shaikh, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Ahmedabad City, Ahmedabad, in exercise of powers

under Section 3(1) of the PASA Act, dated January 11, 2000.

#. The grounds of detention indicate that the detaining authority took into consideration one offence registered against the petitioner. The detaining authority also took into consideration the statements of two anonymous witnesses and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The petitioner has challenged the detention order on various grounds. However, learned advocate for the petitioner restricted her argument to the fact that the petitioner was on police remand when the order of detention was passed. There is only one offence registered against the detainee and therefore, the order passed by the detaining authority is bad in law and the same may be quashed and set aside.

#. Mr. K.T. Dave, learned AGP, appearing for the respondents has opposed this petition. He submitted that the petitioner is involved in bootlegging activities which is detrimental to public health and public order and therefore, the petition may be dismissed.

#. Having regard to the rival side contentions, it may be noted that the detaining authority has placed reliance on the statements of two anonymous witnesses. These statements have been recorded on January 10, 2000. The said statements have been verified by the detaining authority on January 11, 2000. The order is passed on that very day. Keeping in light the principles laid down by a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors. 1993 (2) GLR 1659, and in the case of Bai Amina, w/o Ibrahim Abdul Rahim Alla v. State of Gujarat, 1981 GLR 1186, it cannot be said that the powers under section 9(2) of the PASA Act are properly exercised by the detaining authority. The detaining authority has not filed any affidavit-in-reply nor is there any contemporaneous material to indicate that the detaining authority undertook the exercise of considering the background, antecedents, character etc. of the detainee while arriving at subjective satisfaction about the correctness and genuineness of the statements and fear expressed by the witnesses so also about the need for exercise of

powers under section 9(2) of the PASA Act. As such, the statements are verified and the order is passed on that very day and there was no time lag which could have permitted this exercise. Under the circumstances, there is improper exercise of powers under section 9(2) of the PASA Act which can be said to have affected the right of the detainee of making an effective representation.

#. Another aspect that adversely affects the order of detention is that the detainee was on police remand when the order of detention was passed. However, the detaining authority has not recorded justification for such detention on account of any compelling reasons as stated by the Apex Court in the case of Rameshwar Show, AIR 1964 SC 334, as reiterated in the case of Dharmendra Sugarchand Chelawat vs. Union of India & ors., AIR 1990 SC 1196 and again in the case of Sanjeev Kumar Aggarwal v. Union of India & ors., AIR 1990 SC 1202 and latest in the case of Ahmed Nisar v. State of Tamil Nadu, 1999 SCC (Cri) 1469, Para 46 and therefore, the order of detention cannot be supported as it does not indicate any genuine reason for passing the detention order (for "immediately preventing the petitioner from pursuing his activities").

#. Barring one prohibition case, there does not appear to be any other antecedents in the form of a registered offence. The statements of anonymous witnesses, for the above reasons, cannot be considered. Keeping all these aspects of this particular case in mind, this Court is of the view that the impugned order cannot be sustained and the petition deserves to be allowed.

#. The petition is allowed. The impugned order of detention dated January 11, 2000 is hereby quashed and set aside. The detainee - Munnabhai Idubhai Shaikh is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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